UNIFORMITY OF STATE LAWS.

BY LEWIS N. DEMBITZ.

IN 1856 the German "Bund" (Confederation) was a much looser aggregation of the German States than the American Union under the old Articles of Confederation. But the business men of all Germany felt the inconvenience of the great diversity of the laws among their thirty odd kingdoms, grand and small duchies, principalities and free cities, on all subjects of trade and business. Austria and Prussia were then the leading German powers; the former had most of its provinces outside, the latter over three-fourths of them inside, of the German Bund. Prussia, the strongest and wealthiest of the truly German States, was itself, as to its general and commercial laws, divided into three zones: the eastern being governed by a code adopted in 1792, known as the "Landrecht;" some small districts to the west thereof, acquired in 1815, had retained the "Gemeine Recht," that is, the imperial Roman law, as gradually adapted to modern use; while the lands along the Rhine adhered to the Code Napoleon, which had been introduced there during the French domination. Like conditions prevailed in some of the other States, in which the smaller districts, conglomerated at the recasting of boundaries in 1803, enjoyed each its own system of laws. Now, though such diversity may work tolerably when it affects the laws regarding the tenure, the conveyance or the descent of land, it soon becomes intolerable, in a commercial age, when it affects the laws of trade and commerce in communities bound to each other by railroads and telegraph wires, and depending on one another by the daily exchange of articles of food and wear, of machinery and raw material, and dealing together without regard to state lines, past or present.

And so, under a resolution of the Frankfort Diet, a mere gathering of ambassadors from the sovereign States of the "Bund," a board of commissioners appointed by most (not all) of the several kingdoms, duchies and cities, met at Nuremberg to elaborate a German Code of Commerce. The commissioners adjourned later on to Hamburg, to draw from its sea air the proper inspiration for the marine chapters of commercial law. After five years' labors, in 1861, the Code was completed; it was then laid before the legislative bodies of the different States. The Prussian Landtag adopted it by a unanimous vote in the House of Deputies, and with only one dissent in the House of Lords. Nearly all the law-making bodies of the other German States promptly followed in Prussia's lead. A uniform law on bills and notes had been framed by a conference and adopted by the separate States somewhat earlier, and with much less loss of time or friction.

It was thus shown that, where the need exists, communities almost wholly independent of each other, but connected by the bonds of trade and of a common race and speech, can be gotten to adopt uniform laws.

A need for a greater uniformity of law is felt among the people of the several American States, similar to the necessity which forty years ago led the governments and parliaments of the sovereign States in Germany first into conferences at which a common "Wechselrecht" (law of negotiable paper), and a common "Handelsrecht" (commercial law) were worked out, and lastly to the adoption by each State separately of the laws recommended by the conferences. It is true that the American Constitution intrusts Congress with power to legislate at its own will for the whole country upon everything that pertains to the high seas, to copyrights and patents, and to travel and transportation beween one State and another, or between our own country and foreign nations. It is highly proper, in the interest of human freedom, that the several States alone have the power to pass laws on other matters of private right; that each community can carry into effect its own views as to what is fair or humane, and what is against good manners and public policy; and there is no desire among right-minded men that the field of Congressional jurisdiction should be widened, or that the field of State legislation should be narrowed. But undoubtedly there are many

subjects on which the laws of the several States differ from each other, either broadly, or in some slight detail, to the great detriment and inconvenience of those whose business interests outrun their immediate State lines; and these differences are in most cases accidental; that is, they do not flow from a difference in sentiment or in policy. If New Hampshire permits the insolvent debtor to retain a homestead of only five hundred dollars in value, while Texas allows him to keep a homestead worth more than five thousand, not only as against ordinary creditors, but even against the man to whom he and his wife have freely and voluntarily mortgaged it, the difference springs from the diverging sentiments which an old and staid community, and those which a young and roving population entertains about the sacredness of contracts on the one hand, and about wide elbow room and freedom from care on the other. On such a subject it is not likely that either State would yield its policy even in part, so as to meet on common ground for the sake of uniformity. But if Georgia and six other States require the attestation of three witnesses to a will, while thirty-seven other States are satisfied with the signatures of two witnesses, and Pennsylvania requires no attestation at all; or again, if many of our States allow three days of grace on a matured bill of exchange, while in other States "grace" is done away with, and a bill or note must be paid on the day named, there is no sentiment at the bottom of all this, no question of good policy. One law on these subjects is pretty much as good as the other, but the co-existence of both laws often leads to a failure of justice. A testator owning lands in Georgia makes his will in Ohio, before two witnesses, and the devisee of the Georgia lands is thrown out. Again, in the matter of divorce, the policy of the several States as to causes for untying the knot differs greatly, varying from no full divorce from any cause whatever in South Carolina, to eight or more causes in the Northwest, providing for every conceivable case in which husband and wife cannot agree. This is all right; it is the very object of State independence that each community shall determine such questions for itself; but there is no reason why the plaintiff's "domicile" in the State in which suit is brought, without any named length of residence, should be deemed sufficient in Virginia, while a residence of six months is required, in a few other States, and of even two years elsewhere.

A movement similar to that which within a few years led to one common code on commercial paper, and another common code on commerce in all its branches, for the then disunited States of Germany, was begun in the United States in 1888, mainly upon the impulse given by F. Jesup Stimpson's painstaking compilation of "Constitutions and Statutes" of the American States, a book which set the needless divergence of their statutes forth in a glaring light. A bill was introduced in the New York Legislature in that year, again in 1889, and again in 1890, under which a board of three commissioners was appointed, together with a salaried secretary, the members of the board to meet in conference with commissioners from other States. Massachusetts, Pennsylvania, Michigan, Delaware, New Jersey and Georgia also appointed commissioners in the course of the following year and made small appropriations toward defraying the cost of the conferences. The movement has been kept up, eight meetings having been held in the seven years from 1892 to 1898, two of them in the first named year; and it has greatly widened, for as many as thirty-one States have been represented on these several occasions, though never all of them at the same time. The sessions of these conferences have always been held near the time when the American Bar Association met, generally on the two days preceding its assemblage. In one respect this has been a help, for commissioners who received neither mileage nor *per diem* thus found an incentive for traveling from their homes to the place of meeting, and the Bar Association used the great weight of its influence to further the cause. But in other respects this companionship in time and space has been unfortunate. In the first place, an effort is made to force all the business of the yearly meeting into the limits of scant two days, which is, of course, entirely too short a time, though the bills which are to be discussed have been prepared elsewhere. In the second place, the whole movement is overshadowed by its more widely known associate; the conference, though sitting under appointments from the several State governments, and thus an official body, appears to the general public, and even to the great body of American lawyers, as a branch or committee of the American Bar Association. The writer of these pages first learned about the movement in 1896, when five or six of the conferences had already met. Not only was Kentucky, his own State, unrepresented, but neither

her Governor nor her leading lawyers or politicians knew anything about it. The other two lawyers whom our Governor appointed, along with the writer, as commissioners from his State, though men in large practice, and of well-known public spirit, first heard of this movement, that had been in progress for over seven years, when the appointments were offered to them. When I came to Saratoga on the 15th of August, 1898, having mislaid my copy of the printed notice sent out to members, I had to ask more than a dozen lawyers, hotel clerks, public officers, etc., before I hit upon one man who could direct me to the place of meeting. In short, the whole work has thus far been carried on, so to say, in a dark corner.

Yet, even thus, there have been some notable results. The foremost among these is the elaboration of a bill "relating to negotiable instruments," covering the whole "law merchant" in all details in one hundred and ninety-eight sections. This was agreed upon at the meeting of the commissioners in 1896, and was transmitted by them to the governors of all the States that were represented or had made appointments, and when the conference met for the eighth time in the course of last summer, we heard the gratifying news that this bill had been enacted into law by the legislatures of seven States (among them New York and Massachusetts), and that it had been passed by the House of Representatives of the United States, as a law to govern commercial paper in the District of Columbia, awaiting only the concurrence of the Senate at the winter session. An important act was adopted at the seventh meeting on the execution and acknowledgment of written instruments. One adopted at the eighth and last meeting deals with the transfer of corporate stock, the latter having been enacted by some of the New England legislatures after it had been elaborated by a committee, but before it had been agreed upon in full conference. Misunderstandings will often occur when the citizens of two States, whose laws differ, either on the conveyance of land, or on the transfer of corporate shares, deal with each other, unless each knows the laws of both States. But this is most likely to happen when the law is the same in both.

To gain an idea of the work which the conferences have cut out for themselves, we need only look at the following list of standing committees, which were appointed in 1896:

On Commercial Laws, on Wills, on Marriage and Divorce, on Deeds and Other Conveyances, on Certificates to Depositions and Notarial Forms, on Weights and Measures, on State Action as to Presidential Electors, on Hours of Labor in Factories, on Insolvency, on Insurance, on Trading Corporations, on Descent and Distribution.

Some of these subjects, such as factory regulations, do perhaps fall outside of the true province of our organization, as they appeal to feelings, which differ greatly between section and section; if so, lengthened discussions would show a broad divergence even within the conference, and the impracticable subject would soon be dropped.

It might be objected that any labor bestowed on making our State laws more uniform than they now are, would be thrown away because the forty-eight State and Territorial legislatures, and Congress legislating for the Federal District, are constantly busy grinding out new statutes, and would undo our work of unification more quickly than we accomplish it. But just here, I believe, a system of laws made uniform at an expense of long efforts of many men would bear its finest fruits. As soon as the people begin to enjoy the benefits of uniform State laws, the sentiment that uniformity once attained must not be rashly disturbed upon a light motion, or to gratify the whim or the private interests of a State legislator, could be relied on to block the way of reckless, and still more of selfish, innovators.

The laws of all the American States, with the single exception of Louisiana, are derived from the common law of England, and from the acts of Parliament passed by way of amendment of the common law; the laws enacted in the several States since their separation from the mother country have generally been framed on the same lines. Thus, all the States in which the English law preferring the first born son in the descent of land ever prevailed, have enacted new laws establishing equality between the sons and daughters, the brothers and sisters of the decedent; all the States have provided for the recording of deeds and mortgages; all the States have given to the creditor the means of reaching the lands and effects of absent debtors by attachment; all the States have curtailed the power of the husband over the wife's property; nearly all the States have regulated the exercise of "testamentary powers;" nearly all of them have en-

acted general laws under which private corporations can be formed; all but one of the States allow the grant of absolute divorces, and thus we might go through all the lines along which the framers of new laws have given play to their energies. And what is more, the statutes on all these subjects have generally been moulded upon a very few patterns, either a British act of Parliament or an act first passed by the Legislature of New York, of Virginia, of Massachusetts or of Connecticut. Thus the chapter of the Revised Statutes of New York which deals with "testamentary powers," and the chapter on "Uses and Trusts," have been copied almost literally into the codes of Michigan, Wisconsin, Minnesota, North Dakota and South Dakota; the law marching westward in pretty close touch with the parallel of latitude. Thus the task of those aiming at uniformity is somewhat simplified; they have in many fields of legislation to deal only with four or five groups of States, not with forty-five separate units.

The late war has done much to strengthen the national pan-American feeling of our citizens, North and South, East and West; and thus to lessen the stubbornness with which heretofore the men of one or the other State would in former years cling to some outlandish or fanciful law, just because it was peculiar to that State. While heretofore the benefits of uniform laws might have appealed only to the practical sense of business men, while running counter to sentiments of local pride and of State rights, business reasons and patriotic sentiment may now be found arrayed on the same side. It is only necessary now to bring the importance of this movement home to the lawyers and law givers of the several States, to bring about its speedy success.

We need, first, the steady and active participation of at least thirty-six out of the forty-five States by commissioners appointed under authority of law in each of them. It is not necessary that more than one person should attend from each State.

Secondly, the commissioners, in order to expedite the work, should meet twice in each year, each time for at least three days, and a sufficient sum should be appropriated from some source to pay their travelling and hotel expenses, so as to insure a good attendance. Any greater compensation is unnecessary; it might even be of evil, as it would attract men animated rather by greed for gain than by pride in their profession and love for the public good.

Third, the conference should also have at its disposal a small fund, out of which to compensate some specialist for drawing up the more elaborate bills which must be drafted. Small appropriations have heretofore been made by some of the States; and it was found possible to set aside the sum of one thousand dollars out of these as an honorarium to the painstaking author of the conference bill on negotiable paper, a gentleman who was not himself one of the State Commissioners.

When we once have thirty-six States represented, we would not have long to wait for the remaining nine. When full meetings are held twice a year, the legislatures of the several States will hear of the proceedings and will heed them; and a very small amount will suffice for all the expenditure; that is, the travelling and hotel expenses of the members, the compensation of law drafters, and the printing of the yearly or half yearly reports.

The sum of fifteen thousand dollars a year would fully meet all these needs, and in about five or six years pretty much of the work which is really desirable could be accomplished. Of course, if the Congress of the United States is willing to take the matter in hand, this sum would be readily placed in the yearly "Sundry Civil Bill." But, if Congress is unwilling to do so much, it might at least, as the legislature for the District of Columbia, direct that three lawyers from that district be named every year by competent authority, that they be paid their expenses, and that a small sum be set aside toward the general fund; and, by doing so, Congress would most strongly recommend similar action to all the States and Territories.

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